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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,047	10/15/2003	David R. Henke	1000.70USC1	7526
23552	7590	05/14/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			SMITH, RICHARD A	
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DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/687,047	Applicant(s) HENKE, DAVID R.	
	Examiner R. Alexander Smith	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20031015</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28, 31, 32, 34 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard Catalog, IMPEX Can America, Catalog E-40, 1991-1992 [hereinafter "Richard"] in view of U.S. 4,969,231 to Mader et al.

Richard discloses a coded identification system for identifying a hand tool including a handle and an operative member, comprising a handle indicating an operating characteristic of the operative member (see series "H" page 6), the operative member connected with the handle, corresponding to the operating characteristic, the operative member being a blade, the handle being coded to identify blade flexibility. Richard also discloses a self-adhering label on the blade and having an icon¹ (in a broad sense a representation or symbol) illustrating a portion of the putty knife in with the same indicia (F or S) as the indicia on the first portion of the handle (e.g., the label showing H 1 F to the left and just below the icon with the name "Richard"), the indicia disclosing the blade flexibility (F or S), and provides a listing of identification data for more than one blade in the form of a chart which includes width and flexibility.

¹ "icon" is defined as 1. a. An image; a representation. b. A simile or symbol. This definition is provide by The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation. All rights reserved. American Heritage is a registered trademark of Forbes, Inc.

Richard does not disclose defining flexibility of the blade and the operative characteristic of the operative member by use of a first group of colors, the color indicating blade flexibility, the label on the operative member having said color chosen from said first group of colors indicating said blade flexibility, the icon illustrating a portion of a hand tool in the same color as the color of the first portion, the handle being an integrally molded color handle having the first color, the handle having a first portion with said chosen color from said first group.

Mader et al. discloses a color coded identification system for identifying a hand tool, the hand tool including a handle and an operative member comprising the handle having a first portion and a first color (10 and/or 23) with a color chosen from a first group of colors (column 7, lines 1-6 and column 5, lines 67+), and the handle having an integrally molded color portion having the color chosen from the first group of colors. Furthermore, Mader et al. discloses in the abstract that indicia and/or color may be used to facilitate the user in recognition and selection thereof. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add the features, as taught by Mader et al., to augment the system, taught by Richard, in order to clearly distinguish to the user the operating characteristic of the operating member and the blade and to provide a handle that provides a firm and comfortable grip.

3. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard and Mader et al., as applied to claims 28, 31, 32, 34 and 44 above, and further in view of U.S. 4,936,170 to Zumeta.

Richard and Mader et al. together teach all that is claimed as discussed in the above rejections of claims 28, 31, 32, 34 and 44 except for a chart defining the operating characteristic

of the operative member by use of the first group of colors and the handle including a second color chosen from a second group of colors indicating the handle size.

With respect to claim 29: Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further alter the chart, taught by Richard and Mader et al., by adding the color coded chart, as taught by Zumeta, and to add the color to the label, as suggested by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user.

With respect to claim 30: Zumeta discloses that the invention can be used to apply specific colors to implements, including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by Richard, to have a color selected from a second group, as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

4. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard and Mader et al., as applied to claims 28, 31, 32, 34 and 44 above, and further in view of Goodell, Inc. 1993 Catalogue, 693-1, p. 2-4, 7 [hereinafter "Goodell"].

Richard and Mader et al. together teach all that is claimed as discussed in the above rejections of claims 28, 31, 32, 34 and 44 except for the icon shows the operative member of the hand tool, i.e., putty knife, in its intended use.

Goodell teaches that it is desirable to include a chart identification indicia concerning use or function of the tools in the chart (bottom right corner on page 3). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Richard and Mader et al., by including on the chart thereof indicia identifying tool function, since Goodell teaches that such is beneficial for providing additional information to a user that will facilitate the choice of the specific tool to use.

With respect to the icon showing the operative member in its intended use: It would be obvious with respect to these intended uses, as taught by Goodell, to be placed on an icon showing the intended use of a particular hand tool or putty knife as being merely manufacturing choices based on the preferences of the user or manufacturer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to use show the intended use on the icon, taught by Richard and modified by Goodell, based on preferences of a user or manufacturer. In this case, to help a user or buyer to identify the operating characteristics of the hand tool or putty knife at a glance.

5. Claims 21-23, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard in view of Mader et al. and Zumeta.

Richard discloses a coded identification system for identifying a putty knife, including a handle and a blade, comprising a handle including a first portion with indicia indicating blade flexibility (see series "H" page 6), the operative member connected with the handle, corresponding to the operating characteristic, the operative member being a blade, the handle being coded to identify blade flexibility. Richard also discloses a self-adhering label on the

blade and having an icon² (in a broad sense a representation or symbol) illustrating a portion of the putty knife in with the same indicia (F or S) as the indicia on the first portion of the handle (e.g., the label showing H 1 F to the left and just below the icon with the name "Richard"), the indicia disclosing the blade flexibility (F or S), and provides a listing of identification data for more than one blade in the form of a chart which includes width and flexibility.

Richard does not disclose a chart defining flexibility of the blade by use of a first group of colors, a color from the first group of colors indicating blade flexibility, the icon illustrating a portion of a putty knife in the same color as the color of the first portion, the chart further includes a second group of colors to define the handle size, the handle further includes a second portion with a color chosen from a second group of colors indicating the handle size, the first and second portions are integrally molded members, the second portion covering the first portion indicating the handle size, the second portion having at least one window, the self-adhering label including a box having a background color same as the first portion, the handle including a first color indicating the blade flexibility.

Mader et al. discloses a color coded identification system comprising a handle having a first portion and a first color (10 and/or 23) with a color chosen from a first group of colors (column 7, lines 1-6 and column 5, lines 67+) to indicate an operating characteristic of an operative member, the second portion (16) covering the first portion of the handle and having at least one window to show the first portion (column 5, lines 67+), the operative member connected with the handle, the second portion of the handle has a color chosen from a second

² "icon" is defined as 1. a. An image; a representation. b. A simile or symbol. This definition is provide by The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation. All rights reserved. American Heritage is a registered trademark of Forbes, Inc.

group of colors.. Furthermore, Mader et al. discloses the first and second portions being integrally molded members and frictionally or adhesively joined (claim 29 and column 5, lines 42-55), the second portion having at least one window to show the color of the first portion, the handle including a first color chosen from a first group, the operative characteristic of the operative member corresponding to the first color of the handle. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add the features, as taught by Mader et al., to the system, taught by Richard, in order to clearly distinguish to the user the operating characteristic of the operating member, in this case flexibility of the blade, and to provide a handle that provides a firm and comfortable grip.

Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further alter the chart, taught by Richard, by adding the color coded chart, as taught by Zumeta, and to add the color to the label, as suggested by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user, in this case flexibility of the blade.

Furthermore, Zumeta discloses that the invention can be used to apply specific colors to implements, including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by Richard, to have a color selected from a second group; as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

With respect to the label disposed on the blade having an icon illustrating a portion of a putty knife in the same color as the color of the first portion and the label including a box having a background color same as the first portion: It would be obvious to make the label disposed on the blade having an icon illustrating a portion of a putty knife in the same color as the color of the first portion and the label including a box having a background color same as the first portion as being merely manufacturing choices based on the preferences of the user or manufacturer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further use these labeling features as claimed with identification system, taught by Richard as modified by Mader et al. and Zumeta, based on preferences of a user or manufacturer. In this case to enable someone to identify the operating characteristics of the hand tool or putty knife at a glance.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, Mader et al., and Zumeta, as applied to claims 21-23, 25 and 27 above, and further in view of U.S. 6,295,830 to Bruschi.

Richard, Mader et al. and Zumeta together teach all that is claimed as discussed in the above rejections of claims 21-23, 25 and 27 except for the second portion being dyed in a color chosen from a second group and the at least one window to show the color of the first portion.

Bruschi discloses the second portion (16) covering the first portion (13) and that the portions can have colors, symbols and markings provided for marketing functions, such as decorative and identification functions including size and operative characteristics of the operative member (column 1, lines 21-37) and that the three integrally molded handle

components can be color coded. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to alter the color of the second portion and the first portion (10), taught by Mader et al., to provide decorative and identification functions on the first portion (viewable through the window) and to augment the endcap identification functions by use of the first portion viewable through the window in order to further improve identification of the tool.

With regard to the color chosen from the second group being dyed: The use of a particular type of coloring means, i.e., dyed, as claimed by Applicant, is considered to be nothing more than the use of one of numerous and well known alternate types of coloring means that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to color the second portion as already suggested by Mader et al. and Bruschi.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, Mader et al., and Zumeta, as applied to claims 21-23, 25 and 27 above, and further in view of Goodell.

Richard, Mader et al., and Zumeta together teach all that is claimed as discussed in the above rejections of claims 1-3, 5, 7, 10-12, 21, 23 and 24 except for the chart shows corresponding function for each color defined in the chart.

Goodell teaches that it is desirable to include a chart identification indicia concerning use or function of the tools in the chart (bottom right corner on page 3). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Richard, Mader et al., and Zumeta by including on the chart thereof indicia identifying tool function; since Goodell teaches that such is beneficial for providing additional information to a user that will facilitate the choice of the specific tool to use.

With respect of the color and the corresponding function: It would have been obvious to one of ordinary skill in the art to make the squares shown in the chart color coded to match the function of the blade or operative member since the color coding would provide additional information to a user facilitating the choice of the specific tool.

8. Claims 35, 38 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard in view of Mader et al. and Bruschi.

Richard discloses a color coded identification system for identifying a hand tool including a handle and an operative member, comprising a handle including a first portion with indicia indicating an operating characteristic of the operative member (see series "H" page 6), the operative member connected with the handle, corresponding to the operating characteristic, the operative member being a blade, the operative characteristic being the blade flexibility. Richard also discloses a self-adhering label on the blade with the operative characteristic and indicia (e.g., H 1 F, shown to the left just below the icon with the name "Richard") illustrating the blade flexibility and discloses a listing of identification data for more than one blade in the form of a chart which includes width and flexibility.

Richard does not disclose the first portion including a color chosen from a first group of colors indicating the operating characteristic, a second portion covering the first portion and having at least one window to show the first portion, said label having said color chosen from said first group, the label having an icon illustrating a portion of said hand tool in the same general color as the first portion, the first and second portions are integrally molded members,

and the second portion being molded over the first portion, the first portion is an integrally molded color portion having the color chosen from the first group of colors.

Mader et al. discloses a color coded identification system for identifying a hand tool, the hand tool including a handle and an operative member comprising the handle having a first portion and a first color (10 and/or 23) with a color chosen from a first group of colors (column 7, lines 1-6 and column 5, lines 67+), the second portion (16) covering the first portion of the handle and having at least one window to show the first portion (column 5, lines 67+), the operative member connected with the handle, the second portion of the handle has a color chosen from a second group of colors, the first and second portions being integrally molded members and frictionally or adhesively joined with the second portion being over the first portion (claim 29 and column 5, lines 42-55), and the first portion being an integrally molded color portion having the color chosen from the first group of colors. Furthermore, Mader et al. discloses the second portion having at least one window to show the color of the first portion, the handle including a first color chosen from a first group, the operative characteristic of the operative member corresponding to the first color of the handle. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add the features, as taught by Mader et al., to the system, taught by Richard, in order to clearly distinguish to the user the operating characteristic of the operating member and to provide a handle that provides a firm and comfortable grip.

Bruschi discloses the second portion (16) being molded over the first portion (13) and that the portions can have colors, symbols and markings provided for marketing functions, such as decorative and identification functions including size and operative characteristics of the

operative member (column 1, lines 21-37) and that the three integrally molded handle components can be color coded. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to alter the friction or adhesive joining means and the color of the first portion (10), taught by Richard, and Mader et al., by molding the second portion over the first portion, as taught by Bruschi, and to add the color code to the first portion (10), as suggested by Bruschi, in order to obtain a tighter connection between the portions, to remove the manufacturing step requiring the frictional or adhesive joining, to provide decorative and identification functions on the first portion (viewable through the window) and to augment the endcap identification functions by use of the first portion viewable through the window in order to further improve identification of the tool.

With respect to the label having an icon illustrating a portion of a putty knife in the same color as the color of the first portion: It would be obvious to make the label disposed on the blade having an icon illustrating a portion of a putty knife in the same color as the color of the first portion as being merely manufacturing choices based on the preferences of the user or manufacturer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further use these labeling features as claimed with identification system, taught by Richard as modified by Mader et al. and Zumeta, based on preferences of a user or manufacturer. In this case to enable someone to identify the operating characteristics of the hand tool or putty knife at a glance.

9. Claims 36, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, Mader et al., and Bruschi, as applied to claims 35, 38 and 40-43 above, and further in view of Zumeta.

Richard, Mader et al. and Bruschi together teach all that is claimed as discussed in the above rejections of claims 35, 38 and 40-43 except for the second portion of the handle has a color chosen from a second group of colors indicating handle size, a chart defining the handle size by use of a second group of colors, and a chart defining the operating characteristics of the operative member by use of the first group of colors.

Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further alter the chart, taught by Richard and Mader et al. and Bruschi, by adding the color coded chart, as taught by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user.

With respect to a chart defining the handle size by use of a second group of colors: It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the chart define the handle size by use of a second group of colors, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v Bemis Co., 193 USPQ 8. In this case to identify additional characteristics of a hand tool more clearly and quickly.

With respect to the second portion of the handle having a color chosen to indicate handle size: Zumeta discloses that the invention can be used to apply specific colors to implements,

including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by Richard, Mader et al. and Bruschi, to have a color selected from a second group, as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

Conclusion

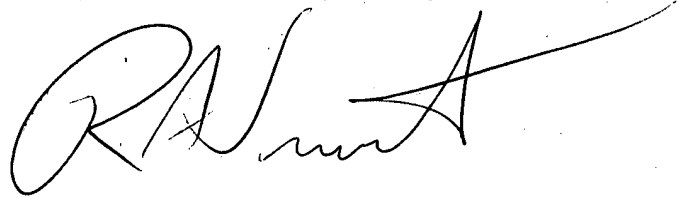
10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related systems and methods.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2859

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'RAS' followed by a stylized surname, likely 'Smith'.

R. Alexander Smith
Examiner
Technology Center 2800

RAS
May 11, 2004